

DELEGATE JAMES: Mr. Chairman, it is time to put in a plea for mercy from the curse of future amendments.

I would like to make such a plea.

DELEGATE J. CLARK (presiding): Do you want to add to it or just state it?

Delegate Gilchrist, do you desire to submit your amendment?

DELEGATE GILCHRIST: I do, sir.

*(President H. Vernon Eney resumed the Chair.)*

THE CHAIRMAN: Pages will please distribute Amendment W. This will be Amendment No. 20. The Clerk will read the amendment.

READING CLERK: Amendment No. 20 to Committee Recommendation R&P-1 by Delegate Gilchrist:

On page 4, section 9, Limitations on State Action, in lines 17 and 18 strike out the following words: "or damaged".

THE CHAIRMAN: The amendment is offered by Delegate Gilchrist. Is there a second?

*(The amendment was seconded.)*

THE CHAIRMAN: The Chair recognizes Delegate Gilchrist.

DELEGATE GILCHRIST: There is one word to which I object very strenuously. The word "damaging" which appears in the amendment is unquestionably the most expensive word which is in this constitution.

There have been several references earlier in this Convention to Pandora's box having been opened. Pandora is in Greek mythology and she was the first woman. She was cautioned not to open the box because of what might happen, but was not told what was in it or the results. She opened it and out of the box flew all of the evils that are on man.

The only thing that stayed in the box was hope. That is about all that is left to the State of Maryland if the word "damages" is left in this section.

From the time that eminent domain proceedings have started there has been the requirement that there be a physical taking or at least a touching of the part of the land which is involved before a taking is compensable.

I have never so much as done a title for the State Road Commission of Maryland

and I do not so much as represent a utility which has any condemning powers.

There are provisions of this kind in about 25 states. In those states there has been a great body of law built up which restricts the definition of "damages". There is no such body of law in Maryland. The question of damages is open to every kind of construction that 24 different circuits and the Court of Appeals in this State can put on it. When you combine it with the abolition of the doctrine of immunity of the sovereign from suit which follows later, you have what is unquestionably the most proliferate breeder of litigation that has come up in many, many years.

I should like to inquire what is meant by damage? Does this mean that if a road is relocated, the owner of the business which is located on the old road can go to the State seeking compensation because the value of his property as a business has been diminished? Does it mean that if the grade of a road is changed, that you are damaged? Does it mean that if a power company erects a line near your property and your view is not quite what it used to be, you are damaged because your property is less desirable, less useful or less valuable, which are the definitions used by the states in which this provision is in effect?

Much of the damage which results in situations of this kind cannot possibly rise above the area of speculation and speculation is an element of damage which has always been rejected in these courts.

The State Roads Commission of Maryland, I found on looking at the budget, spent 22 million dollars last year for the acquisition of rights of way. They will spend much more than 22 million for the acquisition of rights of way if when they apply them, they have to take into consideration damages to people who are not on the roads, not even touched by them.

Without thinking of the situation as it applies to municipalities, as it applies to counties, and as it applies to all of the other authorities and utilities in this state which exercise eminent domain rights, I want to ask where does this money come from?

This money comes from the people of Maryland. You are the people who have to pay for this. And you are the people who will have to pay for the litigation which is bred by a word like this.

I cannot believe that this Convention could possibly subject the State to this